IAQ News

Lawsuits In The Air
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Over the past few years managing indoor air quality (IAQ) has become one of the more demanding challenges facing school facilities professionals.

When temperature was viewed as a matter of comfort, discussions took place in terms of degrees and rates of change. Now that temperature has become an environmental stressor, few of us can adequately articulate how that affects the stress level of individuals.
Legal action, negotiation and arbitration have re-defined what is considered an acceptable response to IAQ complaints. Acceptable indoor air quality has come to be defined by the legal term "reasonable standard of care."

This re-definition has transformed IAQ problems from an engineering issue viewed in terms of rules, regulations, standards and codes, to a health and safety issue that is viewed in terms of standard of care.

School facilities professionals must continue to document all of their actions in terms of sound engineering principles. However, because almost all IAQ litigation is associated with real or perceived negative health effects, school administrators should make sure they have documentation that their actions conform to the legal concept of standard of care.

Foreseeing claims If a student or staff member initiates an IAQ claim against your school or university and tries to recover damages, the person must establish certain facts.

First, the claim must demonstrate that your school had a legal obligation to protect the person from harm. This obligation is usually defined in terms of foresee ability. If you can reasonably foresee that actions on the part of your school could harm someone in your facility, you have a duty to protect that person from harm.

A large number of decisions in case law support the position that your school agrees to accept this duty when you hire someone.

With each duty there is a corresponding standard of care. Standard of care is cast in terms of a "reasonable action." That is, how would another "knowledgeable" person be expected to conduct themselves under similar circumstances?

Second, after having demonstrated the existence of a duty, the claimant must demonstrate that you failed to provide a reasonable standard of care. This constitutes negligence. A staff member's reporting of symptoms-headaches; irritations of the eye, nose or throat; dry cough; dry or itchy skin; dizziness or nausea; difficulty in concentrating; or fatigue-is often sufficient to demonstrate a failure to provide this reasonable standard of care.

The third and traditionally the most difficult of the elements to establish: causation. For one to be found liable for falling below an applicable standard of care, the breach must be directly related to the harm claimed.

In the past, demonstrating a cause-effect relationship was an almost insurmountable obstacle for claimants. Thousands of contaminants could be present with the potential to produce similar symptoms, so demonstrating a direct relationship between the claimed harm and a specific contaminant has proved almost impossible.

As a result, few people prevailed in legal claims over IAQ issues. Then, a new definition of the term, "sick building syndrome" began to take hold.

What is a sick building? Up until about five or six years ago the term "sick building syndrome" was loosely associated with the following set of circumstances:

-The building in question had a relatively large number of occupants.

-5 to 10 percent of the occupants reported a specific set of symptoms.

-The symptoms were non-quantifiable and associated with discomfort, such as headaches; eye, nose or throat irritation; dry cough; dry or itchy skin; dizziness and nausea; difficulty in concentrating; fatigue; or sensitivity to odors.

-Most of the complainants reported relief soon after leaving the building.

As a school facility manager, you would take all the actions that your resources, training and experience would allow, and if you were unable to determine the cause you would bring in an outside contractor with expertise in IAQ investigations. If the contractor couldn't determine a cause, you would then look at the possibility that these complaints could be psychologically based or that the occupants could have come in contact with the contaminant outside your facility.

During the investigation, the term sick building syndrome would be

applied to this situation even if there were a possibility that the symptoms were unrelated to IAQ. In fact, the possibility that these symptoms may have a psychological or systemic cause and could be unrelated to IAQ in your building is as important as any other consideration when the term sick building syndrome is used.

Over the past few years, negotiation, arbitration and litigation have slowly been eliminating the possibility of psychological and systemic causes from the set of circumstances identified when you use the term sick building syndrome.

As a result of this development, sick building syndrome has come to mean that your building is causing the problem and you are unable to discover why. Consequently, a term that had been used to identify a situation where no cause could be determined is now being identified as the cause.

A word to the wise: Make sure that policies and procedures at your district or campus clearly identify your goals in terms of standard of care, and that work instructions and the documentation system clearly spell out the efforts you make to achieve this standard of care. Do not use the term sick building syndrome on documents associated with your investigations unless you are certain that your facility is causing the problem. If documents containing this term turn up in negotiation, arbitration or litigation, it may have the effect of eliminating the need for the claimant to establish causation.

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